

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
The Jeffrey A. Pedersen Credit Trust	No. DE 3147

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TO: Mr. Gary Keister  
The Jeffrey A. Pedersen Credit Trust  
c/o Wescom Capital, Inc., Consulting Division  
P.O. Box 1929  
Port Townsend, WA 98368

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and The Jeffrey A. Pedersen Credit Trust (The Trust) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires The Trust to grant Ecology access to the property located at 419 1<sup>st</sup> Street, Montesano, WA, for the purposes of investigating and remediating releases of hazardous substances on the property. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

### III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The Trust agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter The Trust's responsibility under this Order.

### IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Pedersen Property Montesano Site and is generally located at 419 1<sup>st</sup> Street, Montesano, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).
2. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and The Jeffrey A. Pedersen Credit Trust (The Trust).
3. PLP: Refers to The Trust.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.
5. Pederson Property: Refers to the property located at 419 1<sup>st</sup> Street, Montesano, WA, Grays Harbor County Assessor’s Parcel No. 072000100700, and owned by The Trust on the effective date of this Order.

## **V. FINDINGS OF FACT**

Ecology makes the following findings of fact, without any express or implied admissions of such facts by The Trust:

- (1) The Grays Harbor County Assessors Office lists The Trust as the owner of the Pederson Property, as defined above and as described in the attached legal description, Exhibit B.
- (2) According to an Initial Investigation performed by Ecology in May 2003, petroleum hydrocarbons have been released to soils and groundwater at the Pederson Property.
- (3) Ecology completed a Site Hazard Assessment (SHA) for the Site, and by letter dated July 26, 2004, informed The Trust that the SHA resulted in a ranking of 1 for the Site. Ranking ranges from 1 to 5, with 1 representing the highest relative risk and 5 the lowest relative risk.
- (4) This type of contamination represents a threat to human health and the environment.
- (5) Current use of the property is as an automobile repair facility by Montesano Brake and Muffler.

- (6) Based on Ecology's investigation at this time, and as attested to by the trust, the assets of the trust are limited and consist primarily of an income of \$900.00 per month for rent for the property located at 419 1<sup>st</sup> Street, Montesano, WA .

## **VI. ECOLOGY DETERMINATIONS**

1. The Trust is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because it is the owner of property where there has been a release of petroleum hydrocarbons.
2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.
3. Based upon credible evidence, Ecology issued a potentially liable person status letter to The Trust dated September 20, 2004, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that The Trust is a potentially liable person (PLP) under RCW 70.105D.040 and notified The Trust of this determination by letter dated October 28, 2004.
4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based

on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

5. Based on Finding of Fact number six, above, the Trust lacks the funds to perform a remedial investigation or take remedial actions on the Site at this time.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that The Trust take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC and Chapter 173-360 WAC unless otherwise specifically provided for herein:

### **A. Access**

The Trust shall provide access to Ecology, any authorized representative of Ecology, and any party or entity directed or authorized by Ecology, to all property at the Site that the Trust either owns, controls, or has access rights to at all reasonable times for the purpose of investigating and remediating the release of hazardous substances at the Site. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Trust unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representatives shall not be required to sign any release or waiver as a condition of Site property access.

If there is a lessee(s) on the Pederson Property at the effective date of this Order, The Trust shall serve a copy of this Order upon any current lessee(s). Within 30 days of the effective date of this Order, The Trust shall amend the current lease(s), if necessary, to ensure that Ecology, any authorized representative of Ecology, and any party or entity directed or authorized by Ecology, has access to all property at the Site that the Trust either owns, controls, or has access rights to at all reasonable times for the purpose of investigating and remediating the release of hazardous substances at the Site.

## **VIII. TERMS AND CONDITIONS OF ORDER**

### **A. Public Notices**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

### **B. Remedial Action Costs**

Ecology reserves the right to recover from The Trust all remedial action costs Ecology incurs during Site investigation and remediation. These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. Pursuant to this Order and consistent with WAC 173-340-550(2), within ninety (90) days of receipt of Ecology's written request for reimbursement, The Trust shall pay the required amount. Ecology's request for reimbursement shall include an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by

involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Additionally, pursuant to RCW 70.105D.055, Ecology may file a lien against contaminated property in order to recover Ecology's investigative and remedial action costs when Ecology is unable to recover these costs from a liable party.

**C. Implementation of Remedial Action**

Except where necessary to abate an emergency situation, The Trust shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Marv Coleman, Site Manager/Inspector  
Department of Ecology  
Toxics Cleanup Program  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775  
(360) 407-6390

The project coordinator for The Trust is:

Gary Keister  
P.O. Box 1929  
Port Townsend, WA 98368  
(360) 385-3682



The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and The Trust, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and The Trust may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

#### **E. Public Participation**

A public participation plan is required for this Site. Ecology has developed a public participation plan in conjunction with The Trust, which is included as Exhibit C. Exhibit C is incorporated by reference and is an integral and enforceable part of this Order.

Ecology shall maintain the responsibility for public participation at the Site. However, The Trust shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify The Trust prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by The Trust that do not receive prior Ecology approval, The Trust shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;
3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;
4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:
  - (a) Montesano City Hall  
125 North Main Street  
Montesano, WA 98563
  - (b) W.H. Abel Memorial Library  
112 North Main Street  
Montesano, WA 98563
  - (c) Ecology's Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports; supplemental remedial planning documents; and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

**F. Retention of Records**

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, The Trust shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order. Upon request of Ecology, The Trust shall make all records available to Ecology and allow access for review within a reasonable time.

**G. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.
  - (a) Upon receipt of the Ecology project coordinator's decision, The Trust has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.
  - (b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

- (c) The Trust may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.
  - (d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of The Trust's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.
- 2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
- 3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order.

#### **H. Amendment of Order**

This Order may be formally amended only by the written consent of both Ecology and The Trust. The Trust shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.G. of this Order.

**I. Endangerment**

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**J. Reservation of Rights/No Settlement**

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against The Trust to recover remedial action costs paid to, and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against The Trust regarding remedial actions required by this Order, provided The Trust complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

**K. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by The Trust without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to The Trust's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, The Trust shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, The Trust shall notify Ecology of said transfer. Upon transfer of any interest, The Trust shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**L. Restrictive Covenants**

If Ecology determines that a Restrictive Covenant is necessary at the Site pursuant to WAC 173-340-440(4), the Trust agrees to record an Ecology approved Restrictive Covenant with the office of the Grays Harbor County Auditor within ten (10) days of Ecology's written request to record a Restrictive Covenant. The Trust shall not file a Restrictive Covenant absent Ecology's approval of the Restrictive Covenant. The Restrictive Covenant shall restrict future uses of the Pederson Property. The Trust will provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

**M. Periodic Review**

As remedial action, including ground water monitoring, continues at the Site, The Trust agrees to provide access to Ecology, any authorized representative of Ecology, and any party or entity directed or authorized by Ecology, to all property at the Site that the Trust either owns, controls, or has access rights to at all reasonable times for the purpose of reviewing the progress of remedial action at the Site. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

**N. Indemnification**

The Trust agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of The Trust, its officers, employees, agents, or contractors in entering into and implementing this Order. However, The Trust shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon The Trust's receipt of written notification from Ecology that The Trust has completed the remedial activity required by this Order, as amended by any modifications, and that The Trust has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.

2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event The Trust refuses, without sufficient cause, to comply with any term of this Order, The Trust will be liable for:
  - (a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
  - (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. This Order is not appealable to the Washington Pollution Control Hearings Board.  
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: \_\_\_\_\_

**THE JEFFREY A. PEDERSEN  
CREDIT TRUST**

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

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Susan M. Keister  
Representative of  
The Jeffrey A. Pedersen Credit Trust

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Rebecca S. Lawson, P.E.  
Regional Section Manager  
Toxics Cleanup Program  
Southwest Regional Office



## EXHIBIT A

## EXHIBIT B

C N Byles, Lots 7 through 9, inc. Block 1



## EXHIBIT C

File: PEDagreedorderFIN.doc/ao/2-1-06/docs&zr